

THE HONORABLE LAUREN KING

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDIQAFAR WAGAFE, *et al.*, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

JOSEPH R. BIDEN, President of the
United States, *et al.*,

Defendants.

No. 2:17-cv-00094-LK

**PLAINTIFFS' UNOPPOSED MOTION
TO RECONSIDER ORDER OF
FEBRUARY 22, 2022**

HON. LAUREN KING

**NOTED ON MOTION CALENDAR:
March 4, 2022**

I. INTRODUCTION

Plaintiffs respectfully ask the Court to reconsider striking the jointly stipulated paragraph 10 of the recently entered stay of the case, Dkt. 589, which carved out an exception to the stay to allow the parties to file provisionally redacted versions of the summary judgment briefing on the public docket upon Court approval. The Plaintiffs further request that the Court grant the parties the approval they jointly requested in July 2021 to file those provisionally redacted versions of the summary judgment briefs. Dkt. 568. Defendants do not oppose this motion or have any objection to Plaintiffs' requests.

Currently, none of the summary judgment briefing appears on the public docket *in any form* because Defendants designated portions of the briefing and evidence Highly Sensitive Documents ("HSD"). As an interim measure before the Court decides the parties' sealing and HSD-related disputes, and in accordance with the strong presumption in favor of the public's right to access court records especially on dispositive motions, the parties agreed to file redacted versions of the summary judgment briefing, upon the Court's approval. *See* Dkt. 568. These provisional redactions would *not* resolve the parties' outstanding disputes regarding sealing and Highly Sensitive Document ("HSD") designations, but instead simply allow the public access to versions of the summary judgment briefing that keep hidden all information that Defendants claim as HSD or subject to the protective order as an interim measure until the Court rules on those disputes.

II. BACKGROUND

From March 25, 2021 through July 2, 2021, the parties collectively filed Plaintiffs' Motion for Summary Judgment, Defendants' Opposition to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgment, Plaintiffs' Reply and Opposition to Defendants' Cross Motion, Defendants' Reply, and the Third Declaration of Jennifer Pasquarella¹ (collectively, the "Summary Judgement Briefs"). Defendants designated certain

¹ Docket numbers are unavailable for the Summary Judgment Briefs because they were not and have not been filed on the public docket.

1 documents accompanying the Summary Judgment Briefs as Confidential or Attorney's Eyes
2 Only pursuant to the protective order and certain documents as HSD pursuant to the Western
3 District of Washington General Order No. 03-21. Plaintiffs dispute those designations in
4 contemporaneous briefing.

5 Because the Summary Judgement Briefs contain information from documents designated
6 as HSD, the briefs do not appear on the public docket *in any form*.

7 The parties filed a joint stipulation on July 15, 2021, Dkt. 568, seeking approval to file
8 provisionally redacted versions of the Summary Judgment Briefs on the public docket as an
9 interim measure pending resolution of the designation disputes. The parties proposed that these
10 redacted briefs would keep hidden from public access any information Defendants assert to be
11 HSD and otherwise confidential, and that nothing in the redacted filings would be construed as
12 resolving the parties' outstanding disputes regarding sealing and HSD designations. The parties
13 filed this stipulation to comply with the Ninth Circuit's strong presumption in favor of the
14 public's right to access dispositive motions and LCR 5(g)(5)(A), which requires that a redacted
15 version of any brief filed under seal appear on the public docket, and to allow the public access
16 to redacted versions of these Summary Judgment Briefs. The Court never ruled on this joint
17 stipulation. Certain provisions of this stipulation are no longer accurate following the Court's
18 January 31, 2022 Order (Dkt. 587) striking the parties' outstanding motions to seal and HSD
19 motions, *see* Dkt. 568 at 4 (clauses 1 and 4 reference the sealing and HSD motions that are now
20 struck), but the parties still seek the Court's approval to file such provisionally redacted versions
21 of the summary judgment briefs.

22 On February 11, 2022, the parties filed a stipulation requesting a stay in the case, Dkt.
23 589. In paragraph 10 of that stipulation, the parties jointly requested that as an exception to the
24 stay, the parties still be allowed to file the redacted versions of the Summary Judgment Briefs
25 previously described in the July 15, 2021 joint stipulation, Dkt. 568, even if the Court otherwise
26 stays the case.

On February 22, 2022, the Court granted the parties' February 11, 2022 stipulation, but struck the exception to the stay in paragraph 10 that would allow filing of redacted versions of the Summary Judgment Briefing, upon approval by the Court, as an interim measure until the Court rules on whether Defendants properly designated the documents at issue.

In this Motion, Plaintiffs now seek the Court's reconsideration of only one narrow issue: the Court's striking of the exception to the stay described in paragraph 10 of the February 11, 2022 stipulation. Plaintiffs further request that the Court grant the parties approval to file redacted versions of the Summary Judgment Briefs, as described in the parties' joint stipulation, Dkt. 568.

III. ARGUMENT

Plaintiffs request reconsideration on a narrow procedural issue: allowing an exception to the stay so that the parties may file redacted versions of the Summary Judgment Briefs on the public docket, upon Court approval. Plaintiffs also request that the Court grant the parties approval to file provisionally redacted versions of the Summary Judgment Briefs on the public docket.

This Court recognizes a "strong presumption in favor of access to courts." *Foltz v. State Farm Mutual Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003); LCR 5(g). The preference for open court records "applies fully to dispositive motions, including motions for summary judgment and related attachments." *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). This long-standing practice is grounded in "the need for . . . the public to have confidence in the administration of justice." *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016) (internal quotations omitted). Open court records promote the "interest[s] of citizens in 'keeping a watchful eye on the workings of public agencies.'" *Kamakana*, 447 F.3d at 1178 (quoting *Nixon v. Warner Commc'n., Inc.*, 435 U.S. 589, 597 n.7 (1978)).

Local Rule 5(g)(5) requires a party who cannot avoid including confidential information in a motion to publicly file a redacted version of the motion.

1 The parties received guidance that, pursuant to the Western District of Washington's
2 General Order No. 03-21, motions that contain HSD information cannot be filed on the public
3 docket in any form, even after redacting the HSD information. The Summary Judgment Briefs
4 contain information designated by Defendants as confidential and HSD. Plaintiffs dispute those
5 designations. The parties will address that larger dispute with the Court as part of the July 8,
6 2022 joint status report. Dkt. 592.

7 In an effort to comply with the strong presumption in favor of the public's access to
8 Court records and Local Rule 5(g), the parties agreed to file redacted versions of the Summary
9 Judgment Briefs on the public docket as an interim measure until the Court is able to resolve the
10 dispute over the designations. *See* Dkt. 568. And when the parties filed a joint stipulation
11 requesting a stay in the case on February 11, 2022, Dkt. 589, the parties requested that they still
12 be permitted, upon the Court's approval, to file redacted versions of the Summary Judgment
13 Briefs despite the requested stay. The public and the members of the certified classes have a
14 right to know and understand the proceedings in this case—even if the case is stayed—and
15 public access is particularly important in this situation given the dispositive nature of the
16 Summary Judgment Briefs at issue.

17 Plaintiffs therefore respectfully request that the Court reconsider striking the exception to
18 the stay described in paragraph 10 of the parties' February 11, 2022 Stipulation, Dkt. 589, and
19 grant the parties approval to file provisionally redacted versions of the Summary Judgment
20 Briefs on the public docket, despite a stay in the case.

Respectfully submitted,

DATED: March 4, 2022

s/ Jennifer Pasquarella
s/ Liga Chia
 Jennifer Pasquarella (admitted pro hac vice)
 Liga Chia (admitted pro hac vice)
ACLU Foundation of Southern California
 1313 W. 8th Street
 Los Angeles, CA 90017
 Telephone: (213) 977-5236
 jpasquarella@aclusocal.org
 lchia@aclusocal.org

s/ Harry H. Schneider, Jr.
s/ Nicholas P. Gellert
s/ David A. Perez
s/ Heath L. Hyatt
s/ Paige L. Whidbee
 Harry H. Schneider, Jr. #9404
 Nicholas P. Gellert #18041
 David A. Perez #43959
 Heath L. Hyatt #54141
 Paige L. Whidbee #55072
Perkins Coie LLP
 1201 Third Avenue, Suite 4900
 Seattle, WA 98101-3099
 Telephone: (206) 359-8000
 HSchneider@perkinscoie.com
 Ngellert@perkinscoie.com
 Dperez@perkinscoie.com
 Hhyatt@perkinscoie.com
 Pwhidbee@perkinscoie.com

s/ Matt Adams
 Matt Adams #28287
Northwest Immigrant Rights Project
 615 Second Avenue, Suite 400
 Seattle, WA 98122
 Telephone: (206) 957-8611
 matt@nwirp.org

s/ John Midgley
s/ Yvonne Chin
 John Midgley #6511
 Yvonne Chin #50389
ACLU of Washington
 P.O. Box 2728
 Seattle, WA 98111
 Telephone: (206) 624-2184
 jmidgley@aclu-wa.org
 ychin@aclu-wa.org

s/ Stacy Tolchin
 Stacy Tolchin (admitted pro hac vice)
Law Offices of Stacy Tolchin
 634 S. Spring Street, Suite 500A
 Los Angeles, CA 90014
 Telephone: (213) 622-7450
 Stacy@tolchinimmigration.com

s/ Sameer Ahmed
s/ Sabrineh Ardalan
 Sameer Ahmed (admitted pro hac vice)
 Sabrineh Ardalan (admitted pro hac vice)
Harvard Immigration and Refugee Clinical Program
 Harvard Law School
 6 Everett Street, Suite 3105
 Cambridge, MA 02138
 Telephone: (617) 495-0638
 sahmed@law.harvard.edu
 sardalan@law.harvard.edu

s/ Dror Ladin
/s Sarah Taitz
s/ Lee Gelernt
s/ Hina Shamsi
 Dror Ladin (admitted pro hac vice)
 Sarah Taitz (admitted pro hac vice)
 Lee Gelernt (admitted pro hac vice)
 Hina Shamsi (admitted pro hac vice)
American Civil Liberties Union Foundation
 125 Broad Street
 New York, NY 10004
 Telephone: (212) 549-2616
 dladin@aclu.org
 staitz@aclu.org
 lgelernt@aclu.org
 hshamsi@aclu.org

Counsel for Plaintiffs